IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 339 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ORBIT PARK INN PVT LTD

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 339 of 2004

MR MANISH R BHATT for Petitioner No. 1

MR PJ MEHTA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 01/07/2004

ORAL JUDGEMENT

1. Rule. Learned advocate, Mr. P.J. Mehta, waives service of Rule on behalf of respondent No.1. At the

request of the learned advocates for the parties, this petition is taken up for final disposal today.

2. In the present petition, the petitioner has challenged the order dated 30th October 2003 passed by the respondent No.1 in exercise of powers under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, ('the said Act' for short), as also the order dated 15.12.2003/2.1.2004 passed by the respondent No.1 under Section 7B of the said Act.

3. It is the case of the petitioner that the petitioner could not remain present on the date of hearing of the proceeding initiated by the respondent No.1 and that a telegram to that effect was also sent to the respondents. However, the order dated 30th October 2003 came to be passed ex-parte, and that, therefore, the petitioner could not represent its case before the Authorities. The petitioner, thereafter, sought review of the said order. However, the same also came to be rejected, as mentioned above.

4. By order dated 15th January 2004, this Court issued notice to the respondents and the petitioner was to deposit an amount of Rs.5000 towards costs of the petition. It is stated before me that the said amount was already deposited. It is also submitted by the learned advocate for the petitioner that, though the ad-interim relief was granted against the respondent No.2-Bank from transferring the amount of Rs.2,53,501/from the account of the petitioner, the respondent No.2 had released a draft for a sum of Rs.97,830/- in favour of the respondent No.1.

5. Considering the averments made by the parties, I am of the opinion that the impugned ex-parte order is required to be set aside, and the petitioner is required to be given an opportunity to represent its case before the respondent No.1. Accordingly, the impugned orders dated 30th October 2003 and dated 15.12.2003/2.1.2004 are quashed and set aside. The matter is remanded back to the respondent No.1 for fresh consideration after hearing the petitioner. The amount already recovered by the respondent No.1, as mentioned above, shall be adjusted at the time of passing of final order. The amount of Rs.5000/- deposited by the petitioner in this Court shall be paid over to the respondent No.1.

6. In view of the above direction, this petition stands disposed of. Rule is made absolute to the above extent.

(Akil Kureshi, J.)

(swamy)

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